

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4167 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

UMESH SHAILENDRAKUMAR SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR TS NANAVATI for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1
MR RC JANI for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/08/1999

ORAL JUDGEMENT

#. The petitioners herein approached this Court seeking indulgence by way of quashing FIR lodged against them before Visnagar Police Station vide C.R.No : I 227/99 by respondent No.3. The facts leading to this petition in short can be stated as under;

The petitioners hail from Mathura (U.P.). According to respondent No.3 (hereinafter referred as the complainant), they approached the complainant at Visnagar and stated that they would be able to supply chicory cube and soots at competitive rate and therefore the complainant placed order for 800 metric tone of chicory. Accordingly, amount of Rs.12,00,000/- came to be paid by the complainant to the petitioners by various demand drafts. According to the complainant, it was promised by the petitioners to the complainant that the goods will be supplied by end of May, 1999 but the petitioners failed to supply the goods. When the complainant asked for the delivery of the goods, the petitioners paid no heed and behaved in rude manner and therefore, the complaint was lodged on 21st June, 1999. Prior to the complaint, a suit is also filed by the complainant for recovery of Rs.12 lakhs with interest being Special Civil Suit No : 113 of 1999 in the Court of Civil Judge (S.D.) at Mehsana. In that suit, an application under Order 38 Rule 5 for attachment before the judgment was tendered which is still pending. It is the case of the complainant further that the petitioners have entered into a contract with the Nestle India and are not honouring their earlier commitment although money is paid by the complainant.

#. The petitioners herein have come with a case that they have already supplied the goods as per the agreement and in fact, the value of the goods supplied comes to Rs.13,83,000/- and therefore amount of Rs.1.83 lakhs is to be recovered by the petitioner from the complainant. In order to substantiate their version, the petitioners have produced a statement at Annexure-B to show the details of the goods supplied by them.

#. The complainant - respondent No.3 came before this Court with application for vacating the interim relief by preferring Miscellaneous Criminal Application No : 4334 of 1999 wherein, certain documents are produced to show that the goods are received by them which are not supplied by the petitioners but by another party who is also allegedly acting in conspiracy with the petitioners. That person is Mukesh Tiwari who happens to be a brother in law of petitioner No.1. It is the case of the complainant that Mukesh Tiwari was paid Rs.9 lakhs and in pursuant to that payment, he has supplied certain goods and the petitioners are trying to take advantage of that supply which was made by Mukesh Tiwari against Rs.9 lakhs received by him. Mukesh Tiwari and the petitioners are acting hands in a glove to damage the interests of the

complainant.

#. Mr.T.S.Nanavati, learned advocate appearing for the petitioners submitted that case of the petitioner is not that they have not received the money. The case of the petitioners is not that they have not been supplied the goods but the case of the petitioner is that they have received the money and they have also supplied the goods and in support, of the petitioners' say that they have supplied the goods, they have produced a statement. That statement is supported by the documents which are produced by the complainant - respondent No.3 in Misc. Criminal Application No : 4334/99. The complaint is therefore false, frivolous and vexatious. On the contrary, according to Mr.Nanavati, the petitioners have to recover money from the complainant and to avoid that liability the complainant has lodged this complaint. The complainant has not come out with the details of bilty to indicate supply of goods which were supplied by Mukesh Tiwari. The action of lodging the complaint is therefore tainted with malafides. Mr.Nanavati has placed reliance on the following decisions;

- (i) TRILOK SINGH AND OTHERS VS. SATYA DEO TRIPATHI
AIR 1979 SC 850
- (ii) DHARMACHAND S/O GOPI RAM VS. STATE OF GUJARAT
1980 (2) GLR 341
- (iii) SATISH MEHRA VS DELHI ADMINISTRATION AND ANOTHER
1996 (9) SCC 766

#. Mr.Nanavati submitted that the Court may reach to the bottomline of the act of the parties and assess their intention and then decide whether to exercise powers under Section 482 of CrPC. Under no circumstances, offences under Section 406 or 420 is born out from the complaint itself. The intention of the petitioners was to cheat from the beginning is not born out from the complaint and therefore, the complaint may be quashed.

#. Mr.R.C..Jani, learned advocate appearing for the respondent No.3 - original complainant submitted that Mr.Mukesh Tiwari is the brother in law of petitioner No.1. They both have joined hands to pressurize the complainant and hence, a complaint is lodged by Mukesh Tiwari at Etah in Utter Pradesh. The documents which are produced by the petitioners in form of xerox copies of the invoices of Ryot Chicory Growers & Suppliers are concocted. The complainant has with him certain affidavits of farmers and other independent persons to show that they have supplied chicory to Mukesh Tiwari which were then ultimately sent to the complainant and

that being so, the Court may not exercise powers under Section 482 of CrPC. At his stage, the Court may not enter into questions as to the trustworthiness and acceptability or otherwise of the complaint or allegations made therein or the Court may not enter into question of malafides as alleged by the petitioners. Mr.Jani has further submitted that simply because there is civil dispute, it cannot be said that criminal proceedings cannot be launched or entertained. Mr.Jani has placed reliance on the following decisions;

- (i) P AWAN KUMAR VS. ASHISH ENTERPRISES REGD PARTNERSHIP FIRM 1992 Criminal Law Journal 1619 Bombay - Nagpur
- (ii) KARAM SINGH ALIAS KARMA VS THE STATE BY THE INSPECTOR OF CBCID MADRAS 1992 Crim.Law Journal 2333 (S.C.)
- (iii) SURINDER KUMAR BATRA AND OTHER VS STATE OF PUNJAB 1993 Crim.Law Journal 2298
- (iv) AJAI KUMAR TOMAR VS RAJ NARAIN AND OTHERS 1993 Crim. Law Journal 2547
- (v) GOPAL CHAUHAN VS SMT SATYA AND ANOTHER 1979 Crim. Law Journal 446(F) (H.P.)
- (vi) 1992 Crim. Law Journal 3123 (Mad.)
- (vii) DR.DHANWANTI VASWANI VS STATE AND ANOTHER AIR 1993 SC 1206
- (viii) MRS DHANLAKSHIM VS. PRASANNA KUMAR AND OTHERS AIR 1990 SC 494
- (ix) SMT CHAND DHAWAN VS JAWAHAR LAL & OTHERS AIR 1992 SC 1380
- (x) M/S JAYANT VITAMINS LTD VS. CHAITANYAKUMAR AND ANOTHER AIR 1992 SC 1930

#. Mr.Rawal, learned APP submitted that powers under Section 482 are to be exercised by the Court very sparingly and that too in rarest of rare case as laid down and settled proposition of law as laid down by the Hon'ble Apex on number of occasions. Mr.Rawal further submitted that the investigation is just begun and it is at very preliminary stage. If ultimately at the end of the investigation if it is found that there is no case is made out and the complaint is false, the investigating agency would file appropriate report and therefore at this stage, the Court may not interfere with the investigation by exercising powers under section 482 of CrPC. Mr.Rawal further submitted that accused persons i.e. the petitioners are not cooperating with the investigating agency. The investigating agency has made attempts to locate the petitioners but in vain. On the other hand, the petitioners have made an attempt to file anticipatory bail application and thereby misused the

process of law. Mr.Rawal therefore urged that the petition may be dismissed.

#. Mr.T.S.Nanavati in reply to the arguments advanced by either side, submitted that if affidavits of Danaram Chhogaram Medatiya is seen, he has filed number of affidavits and in each of the affidavits, he has been emerging with the improved version to support the case of the complainant. This sort of staggered camouflage of facts may be seriously viewed and may not be relied upon. As regards the non cooperation by the complainant, Mr.Nanavati submitted that the accused / petitioners apprehended manhandling by the complainant side and to some extent by investigating agency and therefore they had tendered application before the learned Sessions Judge at Mehsana in application for anticipatory bail disclosing their apprehension and the Court was pleased to afford protection pending that application. Accordingly, on 21st July, 1999, on 23rd July, 1999 and 3rd August, 1999 the petitioners have presented themselves before the Sessions Court, Mehsana, and the next date is 16th August, 1999 and on that date also, the petitioners will present themselves before the Sessions Court.

#. Mr.Nanavati has also drawn attention of this Court to Criminal Miscellaneous Application No : 4684/99 which came to be decided on 3rd August, 1999 by this Court which was preferred by the complainant seeking quashing of FIR lodged against him by Mukesh Tiwari at Etah for offences punishable under Section 406 and 504 of IPC. In that complaint, it is found that the goods which are supplied by Mukesh Tiwari are between 26th May, 1999 and 11th June, 1999 whereas, according to the petitioner in the statement produced at Annexure-B, the goods are supplied between 11th June, 1999 and 16th June, 1999. The supply of goods are therefore two separate supply made by the petitioners and Mukesh Tiwari. Annexure-B gets support from the documents produced by the complainant in Misc. Criminal Application No : 4334/99 for vacating the stay and therefore, Mr.Nanavati submitted that this is a fit case where the Court may exercise powers under Section 482 of Cr.P.C. as this is nothing but an abuse of process of law and clear attempts are made to drag the petitioners from Utter Pradesh to Gujarat, put them under pressure. Mr.Nanavati has also pressed into service the decision reported in 1996 (2) GLH UJ 33 between Kawrteya G. Nimaksari and State of Gujarat.

##. Having regard to the contentions raised by the

parties, what transpires is that the complainant has entered into an agreement / contract on one hand with petitioners and on the other hand with Mukesh Tiwari. Admittedly the complainant has parted with Rs.12 lakhs by paying that amount to the petitioners and with Rs.9 lakhs by paying the same to Mukesh Tiwari. The entire amount has been paid by various demand drafts. Admittedly, certain goods are received by the complainant. According to the complainant, these goods are received by him as against the amount of Rs.9 lakhs paid by the complainant to Mukesh Tiwari. According to the petitioners, the goods that are supplied are against the amount of Rs.12 lakhs received by them from the complainant and an attempt is made to show that the documents which are relied upon by the complainant himself tally with the case of the petitioner as emerging from Annexure-B and therefore, the petitioners have supplied the goods, no cheating has taken place and therefore the complaint may be quashed.

##. Keeping in light the principles as emerging from the various decisions of the Hon'ble Apex Court, this Court while exercising powers under Section 482 of CrPC has to exercise powers very cautiously and sparingly and that too in rarest of rare case, that Court may quash the complaint in exercise of these powers. Such powers can be exercised when the apparently the complaint does not disclose offences that are alleged to have committed by the accused persons. In the instant case, the facts are disputed. The dispute is involving of civil transactions and this Court may not enter into a detailed examination and evaluation of the contentions raised by both the sides. This Court is of the view that let both these side exercise their own right in accordance with law and procedure prescribed and it would not be just and proper for this Court to express any opinion on merits at this stage. The FIR is being investigated upon. The investigation is at preliminary stage and therefore, this Court is not inclined to exercise powers under Section 482 for quashing the complaint. It cannot be said, prima facie, that the complaint lacks the ingredients of of offences in the gross. If, any observations are made on contentions raised, the same may affect the right of either of the party and therefore, no observations are made in that regard. But admittedly the facts are disputed which calls for a detailed examination of trustworthiness or otherwise of the documents and respective cases which would call for a detailed investigation and therefore, in this view of the matter, the petition stands dismissed. Rule discharged. However. Mr.Nanavati at this stage suggests that least

any allegation may be made against the petitioner that they are not cooperating with the investigating agency. The petitioners are prepared to appear before the investigating officer even before 16th August, 1999 i.e. the date for hearing of the anticipatory bail application.

Date : 5-8-1999 [A.L.Dave, J.]

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